(3)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR. C.P.30

S.A. No. 235 /2004

APPELLANT PLAINTIFF : Bhuneshwar s/o Ronha, age 50 years, Occupation-Agriculture, r/o village Devgadh, P.S. & Tehsil Sitapur, Distt. Surguja,C.G

V E R S U S

RESPONDENTS DEFENDANTS :

1. Chunru w/o Ronha, age 65 years, Caste-Uraon, Occupation-Household, r/o village & Post Sitapur, Tehsil Sitapur, Distt. Surguja,C.G

2. Jagatram s/o Ronha, age 45 years, Caste-Uraon, Occupation-Service, r/o Wadrafnagar, Tehsil Wadrafnagar Distt. Surguja, C.G.

3. Nageshwar s/o Ronha, age 40 years, Caste-Uraon, Occupation-Agriculture, r/o village Devgarh, P.S. & Tehsil Sitapur, Distt. Surguja, C.G.

4. Chiru s/o Mitku, age 60 years.

5. Lakhan s/o Ufi, age 50 years.

6. Devsharan s/o Ufi, age 40 years.

7. Narayan s/o Ufi, age 55 years,

8. Janeshwar s/o Ronha, age 40 years.

9. Nohri d/o Manjhi, age 50 years.

10. Keshwar s/o Chengna, age 40 years.

No. 4 to 10 by occupation-Agriculturist, r/o village Devgarh, P.S. & Tehsil Sitapur, District Surguja, C.G.

P. R. No. 1056/04
Presented by Shri Rajesh Tiwari
dated 21-4-04

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Bilaspur

contd..2

11. The State of M.P. (Now C.G.)
through Collector, Surguja, C.G.

SECOND APPEAL UNDER SECTION 100 OF THE CODE OF CIVIL PROCEDURE.

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HIGH COURT OF CHHATTISGARH, BILASPUR

Single Bench:- Hon'ble Shri Justice Dhirendra Mishra

Second Appeal No.235 of 2004

Appellant :- Bhuneshwar

Vs

Respondent :- Chunru and others

Shri A.K.Prasad, learned counsel for the appellant.

JUDGEMENT
(Delivered on 01/03/2005)

Heard on admission.

The appellant has preferred this second appeal against the concurrent judgment and decree passed by both the Courts below, whereby the suit of the appellant for perpetual injunction has been dismissed, on the ground that learned both the Courts below have committed illegality on facts as also on law by not considering the admission of the defendants in the earlier suit between the same parties with respect to the same land and in which the defendants had admitted the conclusive possession and title of the plaintiff. In the suit which was filed by Ronha and respondent Nos. 2 & 6 against the plaintiff and others for partition of suit land claiming that it is a joint property, respondent No. 7 and father of respondent No. 10 namely Chengna who were defendants, had admitted in their joint written statement the title and possession of the plaintiff and the suit was dismissed in the year 1980 as abated and since then, he was in continuous possession for more than 12 years and as such he has perfected his title by adverse possession. (Parties hereinafter shall be referred to as per their description in the trial Court.)

The contention of the appellant/plaintiff in this appeal is that he moved an application under Order 6 Rule 17 for amendment of the plaint and the same was dismissed by the first Appellate Court vide order dated 08.08.2003 even before considering the appeal preferred on merits and the first Appellate Court ought to have considered his application for amendment of plaint simultaneously while

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considering his appeal on merits and his application could not be dismissed at the interim appellate stage as per binding judgments of the High Courts and Supreme Court.

The case of the plaintiff before the trail Court was that he is owner of the suit land and is in possession of the same since the lifetime of his father who constructed the dam over the suit land even before settlement. The suit land was purchased by his father from one Tempa for a consideration of Rs. 12/- and thereafter, a dam was constructed and after construction of the dam, it was used for irrigating their lands as well as the lands of others. The plaintiff is in peaceful and exclusive possession of the suit land though the names of the defendants and their ancestors are also recorded in the revenue papers along with the name of father of the plaintiff. The plaintiff is claiming title by the adverse possession on the ground that defendant No.1 and father of the plaintiff and defendants No. 2,3,5 and others filed a civil suit No. 134-A/1980 in the Court of Civil Judge, Class-I, Ambikapur for partition and declaration against the plaintiff and others which was dismissed as abated on 03.09.1985. In the said suit, the plaintiffs i.e. defendants in the present case, submitted that plaintiff Bhuneshwar was claiming exclusive possession over the suit land and some of the defendants of that suit in their joint written statement along with plaintiff Bhuneshwar acknowledged that Bhuneshwar is the owner and is in possession of the suit land and the suit was ultimately abated for not bringing the legal heirs of defendants No. 2 and 3 within time.

In view of the pleadings of the defendants in the above suit and further considering that in the said suit an order of temporary injunction was passed in favour of the present plaintiff against the possession and the application for appointment of receiver of the plaintiffs of that suit was rejected by the Court, the plaintiff claims in the suit that the proceeding of the earlier suit establishes this fact that he was in possession over the suit property from the year 1980 to 1992 for a period of more than 12 year and as such has perfected his title by adverse possession.

However, this contention of the plaintiff has been dealt with elaborately by both the Courts below and there is a concurrent finding by both the Courts below which is based on documents of Ex.D/1 and D/2 being B-1 Kistbandi Khaton and D/3 Khasra Panchshala for the year 1987-88 to 1991-92 respectively, wherein the names of the defendants are recorded as co-owners of the suit property

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along with the plaintiffs and others and the Khasra Panchsala also shows that the defendants are in possession of the suit property along with the plaintiffs. Learned both the Courts below have held that the submissions of the defendants in the earlier suit that the plaintiff Bhuneshwar is claiming exclusive possession over the suit property, cannot be considered as their acknowledgement of title of the plaintiff or to the effect that the plaintiff continued to be in peaceful possession after dismissal of the suit. It has been further held that the pleadings of other defendants cannot bind those defendants who were not a party in the earlier suit.

Considering the documents on record and also considering the proceedings of the earlier suit and further considering the fact that the plaintiff has not pleaded in this plaint that he was in possession of the suit property for more than 12 years adverse to the interest of the defendants, I am of the opinion that the claim of the plaintiff that he has perfected his title by adverse possession has rightly been held by both the Courts below as not established.

The other ground on which the plaintiff has challenged the findings of the first Appellate Court is that while considering his application under Order 6 Rule 17 of the C.P.C.for amendment of the plaint, the Appellate Court dismissed the same even before considering the appeal of the plaintiff on merits, which was not permissible as per judgments pronounced in the matter of ***State of Rajasthan Vs. T.N.Sahani and others*** reported in ***(2001) 10 SCC, 619*** wherein it has been held that the application under Order 41 Rule 27 for taking additional documents on record should be decided at the time of deciding the appeal finally because then only it would be possible for the appellate Court to arrive to a conclusion whether the documents were at all necessary for the adjudication of the appeal. He also placed his reliance in the matters ***Harbilas Ochchelal and others Vs. Kokabai and others*** reported in ***1981 MPLJ 722, para 7*** and ***Ramesh Singh and others Vs. Vaijanti Bai and others*** reported in ***M.P.L.J. 2003(4), 162, para 6 & 7*** where in the case of Harbilas Ochchelal & others Vs. Kokabai & others (supra), revision of the appellant against the order of rejection of his applications under Order 41 Rule 27 (1)(b) and under Order 6 Rule 17 of C.P.C. were allowed and the case was remanded to the first Appellate Court with a direction to decide the same at the time of finally disposing of the appeal. Similarly, in the case of Ramesh Singh Vs.Vaijanti Bai & Others (supra),, the first appellate Court remanded the case by setting aside the judgement without deciding the

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application under Order 6 Rule 17 of the C.P.C. for a fresh decision to the trial Court.

However, in the present case, the learned first appellate Court decided the application for amendment of the plaint of the plaintiff before deciding the appeal and rejected the same on the ground that the appellant is claiming title by adverse possession at the appellate stage which changes the nature of the suit and the same can not be permitted.

Learned counsel for the appellant/plaintiff has challenged the rejection of his application for amendment on the ground that the same should have been decided along with the appeal finally. However, the learned counsel has not pointed out as to what prejudice was caused to the plaintiff if his application for amendment was decided at the interim appellate stage.

The submission of the plaintiff that he has perfected his title by adverse possession was not acceptable firstly on the ground that the plaintiff has neither pleaded in the plaint that he was in continuous open possession of the suit property to the knowledge of the defendants and adverse to the interest of the defendants. On the contrary, the plaintiff has claimed the title over the suit property on the averment that the land was purchased by his father and he was in exclusive possession over the same as owner.

Thus, the concurrent findings of both the Courts below that the land in question is recorded in the names of both the parties and further finding that the plaintiff has failed to plead and prove the ingredients of adverse possession, the learned Courts below have rightly held that the plaintiff has failed to prove his title over the suit property and I do not see any infirmity in the above concurrent findings of facts recorded by both the Courts below. Therefore, there is no substantial question of law involved for adjudication of this appeal as proposed by the appellant.

As a result, the instant appeal deserves to be dismissed and it is accordingly dismissed.

However, in the facts and circumstances of the case, there shall be no order as to costs.

With the aforesaid observations, M.C.P.No.607/04 stands disposed of.

Sd/-
Dhirendra Mishra
Judge